

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In Re: BIOGEN IDEC, INC., SECURITIES)
LITIGATION,)
)
)

Civil Action No. 1:05-cv-10400 (RCL)

**OPPOSITION OF THE BIOGEN INSTITUTIONAL INVESTOR
GROUP TO THE MOTION OF THE LONDON PENSIONS FUND
AUTHORITY AND NATIONAL ELEVATOR INDUSTRY PENSION
FUND FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY**

The motion of the London Pension Fund Authority and National Elevator Industry Pension Fund (the "London group") for leave to file supplemental authority should be denied for the following reasons.

First, because the purported authority -- an unpublished decision of a district court from another circuit -- was decided after Magistrate Judge Bowler ruled on the motion, it cannot support the conclusion that the ruling was "clearly erroneous or contrary to law." *Harvard Pilgrim Health Care of New Eng. v. Thompson*, 318 F. Supp. 2d 1, 12 (D. R.I. 2004) quoting Fed R. Civ. P. 72(a); *see also SmithKline Beecham Corp. v. Apotex Corp.*, No. 98-C-3952, 2000 U.S. Dist. LEXIS 13606, at *7 (N.D. Ill. Sept. 12, 2000) ("In reviewing a magistrate judge's nondispositive order for clear error, we may only properly consider the evidence that was before the magistrate judge at the time of the order. If we were to permit the introduction of new evidence at this stage, we would essentially be conducting an impermissible de novo review of the order.") Accordingly, the London Group's motion for leave to file supplemental authority should be denied because, even if the facts of that case were analogous, which they are not, it could not form the basis for reversing Judge Bowler's decision.

Second, the facts of *Smajlaj v. Brocade Communications Systems, Inc.* No. 05-02042 (N.D. Cal. Jan. 2006) (CRB) are inapplicable to the facts before this Court. In *Brocade Communications*, the court declined to appoint as lead plaintiff a hedge fund that failed to evidence that it had authority to bring the motion, or even to explain its complex corporate structure to the court:

In particular, the Court is concerned about an apparent reluctance by Interpid to turn over documentation of its authority to litigate this matter to the Court, as well as the continuous 'new' revelations that appear to expose the somewhat complicated and intricate structure of the company.

Id. at 4. These issues were not raised against the Biogen Institutional Investor Group, nor could they have been. The *Brocade Communications* decision stands for the unremarkable proposition that a movant whose description of its corporate structure changes repeatedly and who has failed to demonstrate its authority to bring the motion should not be appointed as lead plaintiff. That holding has no application here. Despite the London Group's arguments, Judge Bowler correctly concluded, on a full record and after holding two hearings, that the Biogen Institutional Investor Group demonstrated the largest financial interest and was adequate and typical and that, therefore, it should be appointed lead plaintiff. Judge Bowler's decision should stand.

DATED: February 8, 2006

Respectfully submitted,

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/s/

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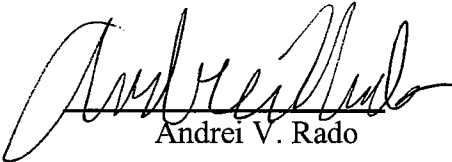
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CERTIFICATE OF SERVICE

I, Andrei V. Rado, an associate with the law firm Milberg Weiss Bershad & Schulman LLP, hereby certify that I caused a true and correct copy of the foregoing to be served by regular U.S. Mail to all parties listed on the attached service list on this 8th day of February 2006.



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